

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

IN RE: : CASE NO. 18-14408
Flipdaddy's, LLC : JUDGE HOPKINS
Debtor In Possession : CHAPTER 11

**JOINDER OF THE MYERS Y. COOPER COMPANY TO THE
OBJECTION OF IRC NEWPORT PAVILION, LLC TO THE
CHAPTER 11 PLAN OF REORGANIZATION OF FLIPDADDY'S LLC**

The Myers Y. Cooper Company (“**Myers Cooper**”) hereby submits this joinder (the “**Joinder**”) and joins in the *Objection of IRC Newport Pavilion, LLC to the Chapter 11 Plan of Reorganization of Flipdaddy's, LLC* [Docket No. 153] (the “**Objection**”). In support of its Joinder, Myers Cooper respectfully states as follows:

1. Myers Cooper and the Debtor are parties to a lease dated as of March 3, 2010 (as amended and extended, the “**Lease**”) under which the Debtor leases from Myers Cooper the premises located at 7451 - 7455 Wooster Pike, Cincinnati, Ohio, as more particularly described in the Lease, (the “**Premises**”). The premises is located in the Wooster at Walton Creek shopping center in Mariemont, Ohio.

2. Prior to the Petition Date,¹ the Debtor failed to pay both November 2018 and December 2018 rent, resulting in a pre-petition arrearage of \$16,041.89. *See* Clerk Claim No. 33.

3. Since the Petition Date, the Debtor remains in possession of the Premises, use and enjoyment of the Premises in its operations. In addition to operating its restaurant at the Premises, the Debtor's corporate offices have moved to the Premises.

¹ Capitalized terms not otherwise defined herein shall have the meaning defined in the Objection.

4. Notwithstanding the Debtor's continued possession, use, and enjoyment of the Premises, the Debtor failed to make timely post-petition rent payment to Myers Cooper as required by Section 365(d)(3) of the Bankruptcy Code - all of Debtor's post-petition rent payments have been late.

5. On April 5, 2019, the Debtor filed the *Motion to Extend Time for the Acceptance and/or Rejection of Executory Contracts and Certain Leases* [Doc. No. 84] (the "**Extension Motion**") seeking to extend the time the Debtor has to either accept or reject unexpired leases until confirmation of a plan of reorganization.

6. On May 5, 2010, the court entered its *Order Approving Agreement of the Debtor and IRC Newport Pavilion, LLC and The Myers Y. Cooper Company Resolving the Objection to the Debtor's Motion to Extend the Time for the Acceptance and or Rejection of the Executory Contracts and Certain Leases* [Doc. No. 102] (the "**Assumption Agreed Order**").

7. Pursuant to the Assumption Agreed Order, the Debtor filed *Motion of the Debtor for an Order, Pursuant to 11 U.S.C. §§ 105(a) and 365(A) and Fed. R. Bankr. P. 6006, to (1) Assume an Executory Contract with the Myers Cooper Company, (2) Establish the Cure Amount and (3) Procedures Related Thereto* [Docket No. 116] (the "**Assumption Motion**") on June 7, 2019.

8. On June 28, 2019, Myers Cooper filed its objection to the Assumption Motion ("**Assumption Objection**") because, among other things, the Debtor failed to provide adequate assurance of future performance as required by Section 365(b)(1) of the Bankruptcy Code.

9. The Debtor paid the Cure Amount, as defined in the Assumption Objection, but has not yet provided Myers Cooper with adequate assurance of future performance.

JOINDER

10. Myers Cooper agrees with the factual and legal bases for the Objection and, therefore, submits this Joinder in support thereof.

WHEREFORE, Myers Cooper respectfully requests the entry of an order (a) denying confirmation of the plan and (b) granting Myers Cooper such other and further relief to which it is justly entitled.

Dated: July 19, 2019

Respectfully submitted,

/s/ Casey Cantrell Swartz
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CERTIFICATE OF SERVICE

I hereby certify that all ECF participants registered in this case were served electronically on the date of filing through the court's ECF System at the email address registered with the court, and on the following parties via U.S. Mail, postage paid, on July 19, 2019:

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